IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL FIRST APPEAL NO.267/01

Nahar Singh & Ors. Vs. Hazari Singh

Against judgment and decree dated 23.04.2001 passed by District Judge, Pali in Civil Original Suit No. 40/1986 - Nahar Singh Vs. Hazari Singh.

DATE OF JUDGMENT :: 3rd January,2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. S.M. Parihar for appellants.
Mr. Arvind Samdariya for respondent.

BY THE COURT:

This appeal under Sec. 96 CPC is directed against the judgment and decree dated 23.04.2001 passed by District Judge, Pali in Original Civil Suit No.40/86 whereby the suit filed by plaintiff-appellants was dismissed with costs.

Briefly stated, the facts giving rise to the present case are that plaintiff-appellants filed a suit for specific performance against the defendant-respondent with the averments that the land in dispute, description of which has been made in Para 2 of the plaint, was in the joint Khatedari of defendant, there had not been any partition of the joint tenancy, and the defendant was having half share in the agricultural land measuring 51½ bighas. It has been averred that an agreement was executed on 01.8.1984 whereby it was agreed by the defendant that he would sell his half share in the agricultural land which remained undivided in the joint tenancy to the plaintiffs @ Rs.1100 per bigha, and his share in the well which was also there was also agreed to be sold for a sum of Rs.5,100/-. It is further stated in the plaint that on 27.07.1984 regarding the land mentioned in Para No.2, an agreement was entered and a sum of Rs.22,101/- was received by the defendant and he agreed to get registry of the land done on a

subsequent date. It is further stated that on 01.08.1984 a fresh agreement was entered between the parties for the reason that the defendant wanted enhanced rate in relation to his agricultural land and on that day remaining amount that was Rs. 44,549/- was received by him and the possession of the land was handed over by the defendant. It is further stated that subsequently as the defendant did not get the registry done in favour of the plaintiffs, as such it became essential for them to file a suit for specific performance. It was also stated in the suit that the defendant executed the agreement for the reason that the money was required for the marriages of his sons and daughters and it was the need of the family. It was prayed that the suit be decreed against the defendant and in alternate the amount paid be ordered to be decreed against the defendant alongwith interest @18% per annum.

In the written statement, defendant stated that it was correct that on earlier date

i.e. 27.07.1984 an agreement was executed in relation to sale of the agricultural land mentioned in para 2 of the plaint and a sum of Rs.22,101 was received on the very same day and remaining amount Rs.44,549 was required to be paid subsequently, however, on 31.07.1984 the family members of the defendant did not agree for the sale of the agricultural land so he went to the house of the plaintiffs and cancelled the agreement. It is also stated that the plaintiff Jabar Singh also wrote a letter in this behalf wherein a mention has been made about cancellation of the earlier agreement dated 27.07.1984. It is further stated in the additional pleas of the written statement that infact on 01.08.1984 the plaintiffs were required to execute a cancellation deed and he was shown a written deed as if it was a deed of cancellation and in between the said papers one blank stamp paper was inserted by Babu Singh, who stealthily under the pretext that the actual cancellation deed was placed before the defendant, in a

concealed manner got affixed the thumb impression of the defendant, which fact immediately came to the knowledge of the persons present there as Babu Singh, who did this mischief, had run away from the place. It is also stated that after two and a half hours of the incident, Babu Singh was brought at the spot and he handed over two papers; one blank stamp paper, and one other paper. Both the papers were handed over to Bhanwar Singh, who is said to be the writer of the cancellation deed and Bhanwar Singh without showing the papers delivered to him, threw it in some drain nearby. It is further the case of the defendant in the written statement that subsequently a forged document was prepared regarding sale whereas there had been only an agreement between the parties with regard to sale of the agricultural land on 27.07.1984.

The learned trial Court on the basis of the pleadings of the parties framed as many as 8 issues. The plaintiffs in support of

their case have produced as many as 4 witnesses and the defendant has produced 6 witnesses. In documentary evidence, Ex.1 is the agreement dated 01.08.1984 which is important for the decision of this case. Other documents which have been tendered in evidence by the plaintiffs i.e. notice etc. are not of much significance. The defendant has also tendered some documents in evidence.

The learned trial Court, after hearing both side, while deciding Issue No.2, 4, 6 & 7 which were in relation to the execution of the agreement dated 01.08.1984 and also in relation to document Ex.1, came to the conclusion that in fact the document was forged one and there had not been any agreement on 01.08.1984 with regard to sale of the agricultural land mentioned in para 2 of the plaint.

In view of above finding, other issues were also disposed of and the suit of the plaintiff was dismissed vide judgment and

decree dated 23.04.2001 passed in Original Civil Suit No.40/86. Feeling dissatisfied with the judgment and decree passed by the learned trial Court, the plaintiff-appellants have filed this First Appeal.

Heard learned counsel for the parties and perused the material available on record.

In the present case, the points cropping up for determination are (1) As to whether there was any agreement by which the land in dispute, mention of which has been made in para 2 of the plaint, was sold for a consideration mentioned in that para? (2) Whether the document Ex.1 tendered in evidence is a forged one?, and (3) What is the effect of the document Ex.1 in the present case?

Since points (1) & (2) are interlinked with each other, same are being decided together.

Point No.(1)& (2):

It is to be seen that though the plaintiffs have stated in their statements that there had been an agreement on 01.08.1984 in relation to the disputed land and the defendant was paid the remaining amount of Rs.44,549 and the defendant agreed to get the registry done by 10.09.1984. It has also been stated that the defendant when did not comply his part of contract, the suit was filed. In the other evidence of plaintiff, PW2 Shivlal has stated that infact he had written document Ex.1 and the defendant had put his thumb impression in his presence on it. PW3 Joga ram is not material witness for the purposes of present case. PW4 Ganpat Ram is Oath Commissioner, who has stated that he had attested the document. He has also stated that the document was attested in the Munsif Court and DW1 Hazari Singh affixed his thumb impression in the Court premises.

As against the above evidence, defendant DW1 Hazari Singh has stated that a

false document has been prepared. He has also stated that earlier on 27.07.1984 it was agreed between the parties that the agricultural land will be sold to the plaintiffs but subsequently as his family members did not agree to it, he went to the plaintiffs and stated that the deed has to be cancelled. He has also stated that after cancellation of the agreement dated 27.07.1984 plaintiff gave a letter Ex.A/3 wherein a mention has been made regarding cancellation of the earlier agreement and on 01.08.1984 a cancellation deed was to be reduced in writing. He has also stated that at the time of signing cancellation deed, under the pretext of getting signed the cancellation deed, Babu Singh concealed one blank stamp paper in between the papers and obtained his thumb impression on that but this fact came to his knowledge and also to the other persons available there because Babu Singh who had done this mischief ran away from the spot. It is also stated that a First Information Report was to be lodged on that very same day but on the

advice of other persons he waited for some time and thereafter Babu Singh was brought on the spot and he handed over the stamp paper to Bhanwar Singh, who is PW2 in this case and he without seeing those papers torn them into pieces and threw in a drain. The defendant has stated that he never executed any agreement to sale in relation to his agricultural land on 01.08.1984 and the document which has been brought on record by the plaintiffs is a forged one. The statement of DW1 has been supported by other witnesses; namely, DW2 Surta Ram and DW3 Bhanwar Singh. With regard to possession over the land in dispute, the possession has been stated to be of the defendant by the witnesses. The learned trial Court has discussed the evidence in detail and I do not find any error in the appreciation of evidence by it. The learned trial Court, while discussing the evidence, came to the conclusion that the document Ex.1 appeared not to be a genuine one for the reason that the Oath Commissioner says that he attested the document

in the court premises whereas the plaintiff and other witnesses say that thumb impression by the defendant was put at the shop of one Jawanmal, where plaintiff Jabarsingh was employed. The sole attesting witness of document Ex.1 is Kishore, who has not been produced in evidence. The Oath Commissioner's evidence is not reliable for the reason that he has not produced any register etc. to show that on a particular date the defendant had been to the Court where the alleged document had been attested. The trial Court has assigned reasons for not believing the agreement dated 01.08.1984 with regard to the agriculture land in dispute. It has also come in evidence of the witnesses that in respect of the mischief played on 01.08.1984, a First Information Report was also lodged subsequently and in that matter a challan was filed in the competent Court having jurisdiction. Ex.18 is the document, which is in relation to earlier agreement. Ex.18 and A/3, the two documents, do not show that for family need the land in

dispute was agreed to be sold to the plaintiffs. The Court has compared the thumb impression put on the document Ex.1 and was also convinced that there had been mischief on the part of the plaintiffs and resultantly the document Ex.1 was not considered a reliable document to arrive at a conclusion that the defendant agreed to dispose off his agricultural land vide Ex1.

It has also come in evidence that a Revenue Suit was also filed by the defendant wherein permanent injunction was granted restraining the plaintiffs not to interfere in the possession of the defendant. This aspect has not been disputed before me. Thus, from the facts which have come on record, the position which emerges is that till date the possession over the disputed land is admittedly of the defendant. It further appears that the document alleged to be agreement to sale of agricultural land in fact creates suspicion about its execution in view of the fact that it

has not been disputed and denied before this Court at the time of arguments that on the date of incident Babusingh ran away from place with stamp papers and after two and a half hours came back at the spot and delivered two papers to Bhanwar Singh and out of those two papers one was blank stamp paper and other one was not a stamp paper. Both the papers after tearing were thrown in the drain by Bhawar Singh without seeing them.

In view of the above, the finding arrived at by the learned trial Court that the plaintiffs suit was not liable to be decreed on the basis of such an agreement Ex.1, which did not appear to be a genuine document, particularly in view of the fact that the earlier executed agreement was cancelled and in that regard one of the plaintiffs Jabar Singh himself has written Ex.A/3, a letter wherein the fact of cancellation of earlier agreement has been mentioned and this particular document A/3 has not been denied and infact this

document has been admitted by one of the plaintiffs in his cross examination. There is not one but many other circumstances are available in the plaintiffs' case, which create suspicion about the genuineness of document Ex.1. The plaintiffs have miserably failed to prove that on 01.08.1984 the defendant had executed a document which was purporting to be a document of sale of his agricultural land to plaintiffs. If that is so, then the learned trial Court has committed no error in dismissing the suit of the plaintiffs which was based on Ex.1. Resultantly, the points (1) and (2) are decided accordingly.

Point No.(3):

In view of findings recorded on Point No.1 & 2, the answer to point No.(3) is that on the basis of Ex.1 the plaintiffs cannot c laim any right whatsoever in relation to the disputed land and the plaintiffs' appeal is liable to be dismissed.

In view of above, the appeal is devoid of merit, and is hereby dismissed.

(SATYA PRAKASH PATHAK)J.

/jpa